

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE ) MDL No. 1456  
LITIGATION )  
CIVIL ACTION: 01-CV-12257-PBS  
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THIS DOCUMENT RELATES TO ) Judge Patti B. Saris  
01-CV-12257-PBS AND 01-CV-339 ) Chief Magistrate Judge Marianne B. Bowler  
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)

**DECLARATION OF RAYMOND S. HARTMAN**  
**OPPOSING THE SCHERING-PLOUGH CORPORATION'S MOTION TO**  
**STRIKE CERTAIN SUBJECT DRUGS: INTRON A**

1. My name is Raymond S. Hartman. I have previously presented my qualifications to this Court.
2. I have been asked by Counsel to the Plaintiffs to explain why it is appropriate to include Intron A ("Intron"), a drug manufactured by Schering-Plough, as a physician administered drug and/or a Medicare Part B drug in my December 15, 2005 Declaration on Liability and the Calculation of Damages in this matter.
3. Based upon my review of Healthcare Common Procedure Coding System (HCPCS) crosswalk tables provided by the Centers for Medicare and Medicaid Services (CMS) on their website, the observation was made that many Intron NDCs have been issued a J-Code. This suggests that the drug is covered by Medicare Part B, may be physician administered, and is therefore an appropriate Subject Drug. Though some NDCs were not explicitly listed as having an assigned J-Code in the information available to me, I determined that the presentation of these NDCs was sufficiently similar to the NDCs that do appear in the crosswalk to assume that all Intron NDCs were covered at some point in time under Medicare Part B.
4. Schering-Plough has stated that a set of Intron NDCs are indicated for self-administration only.<sup>1</sup> Though it may be true that some Intron NDCs are designed for self-administration, it is also true that some of these NDCs have in fact been assigned the J-Code J9214, suggesting Medicare Part B coverage. As just one example, Intron NDC 00085-1235-01 is described by Schering-Plough as being exclusively self-administered and is subject to the motion to strike. Yet this NDC is listed in HCPCS crosswalk tables as having a J-Code of J9214 (see Attachment A below) and therefore covered by Medicare Part B.<sup>2</sup>
5. As another example, the Intron NDC 00085-1133-01 is described by Schering-Plough as mostly self-administered and only sometimes physician-administered and is subject to the motion to strike. However, this NDC is also listed in HCPCS crosswalk tables as having a J-Code of J9214 (see Attachment A) and is therefore covered by Medicare Part B.<sup>3</sup>
6. Schering-Plough lists some Intron NDCs that it admits are commonly physician-administered. Though Schering-Plough does not seek to strike these NDCs at this time, they have reserved the right to do so in the future. It should be noted that some of these

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<sup>1</sup> See Memorandum in Support of Schering-Plough Corporation's Motion to Strike Certain Subject Drugs, June 23, 2006 (hereafter *Memorandum*). See also the Declaration of Jack Micali, attached as Exhibit B to the *Memorandum* (hereafter *Exhibit B*). Note that the following Intron NDCs are not subject to the motion to strike: 00085-0689-01, 00085-1110-01, 00085-0285-02, 00085-0571-02, 00085-0571-06 and 00085-0539-01. The first five NDCs are characterized as both self-administered and physician-administered (see *Exhibit B*, ¶ 9), whereas the last is characterized as physician-administered (*Exhibit B*, ¶ 10).

<sup>2</sup> See the *Memorandum* and *Exhibit B*, ¶ 7. Other NDCs in this category that appear in HCPCS crosswalk tables as J9214 are 00085-1242-01, 00085-1254-01 and 00085-1168-01.

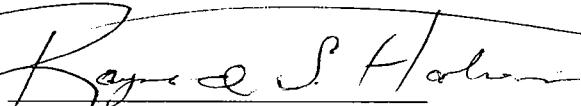
<sup>3</sup> See the *Memorandum* and *Exhibit B*, ¶ 8. The NDC 00085-1179-02 is also listed in this category and also appears in HCPCS crosswalk tables as J9214.

NDCs, such as 00085-1110-01, are also found as J9214 on HCPCS crosswalk tables (see Attachment A)<sup>4</sup> for Medicare Part B coverage.

7. Therefore, based on my review of HCPCS crosswalk tables that match Intron NDCs with a specific J-Code, I conclude that Intron is covered by Medicare Part B, can be physician-administered, and is properly included in the List of Subject Drugs. This is the same analysis and conclusion made during my damages and liability analysis.

I declare under penalty of perjury that this Declaration is true and correct.

Executed on July 7, 2006



Raymond S. Hartman

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<sup>4</sup> See the *Memorandum and Exhibit B*, ¶ 9. The NDC 00085-0571-02 is also listed in this category and also appears in HCPCS crosswalk tables as J9214.

**Attachment A****July 2005 NDC - HCPCS Crosswalk for Medicare Part B Drugs****Effective July 1, 2005 through September 30, 2005****Note 1:** This crosswalk is based on published drug and biological pricing data and information submitted to CMS by manufacturer.**Note 2:** Please submit comments on the crosswalk to e-mail address: sec303aspdata@cms.hhs.gov.

HCPCS Code	Short Descriptor	Code Dosage Descriptor	Labeler Name	National Drug Code (NDC)	Drug Name	Package Size	Package Quantity	Billable Units Per Package	Billable Units Per 11-Digit NDC
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-0539-01	Intron-A	1	1	50	50
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-0571-02	Intron-A	1	1	10	10
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-1110-01	Intron-A	1	1	18	18
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-1133-01	Intron-A	2.5	1	25	25
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-1168-01	Intron-A	3	1	18	18
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-1179-02	Intron-A	1	6	10	60
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-1235-01	Intron-A	1.5	1	30	30
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-1242-01	Intron-A	1.5	1	18	18
J9214	Interferon alfa-2b inj	1 MIL UNITS	SCHERING	00085-1254-01	Intron-A	1.5	1	60	60

**CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE**  
Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on July 7, 2006, I caused copies of **DECLARATION OF RAYMOND S. HARTMAN  
OPPOSING THE SCHERING-PLOUGH CORPORATION'S MOTION TO STRIKE  
CERTAIN IN SUBJECT DRUGS: INTRON A** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman